



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

National Policy Memorandum

Office of Trust Services Division of Forestry and Wildland Fire Management

Number: NPM-TRUS-47

Effective: 11/04/2022

Expires: 11/04/2023

Title: Carbon Sequestration Agreement Policy

1. Purpose

The purpose of this policy is to define the Bureau of Indian Affairs' (BIA) role regarding existing or proposed carbon sequestration contracts or agreements (agreements) between Tribes and non-governmental organizations or other entities (outside parties); to describe guidance that the BIA will provide to Tribes; and define how the BIA will interpret carbon sequestration agreements in the fee-to-trust process.

2. Scope

This policy applies to all BIA employees involved in the review of carbon sequestration agreements.

3. Background

Carbon is not considered a trust asset because under carbon agreements, carbon is neither "harvested" nor "extracted;" therefore, carbon is not considered a "forest product." The carbon sequestration process refers to the natural absorption from the atmosphere of carbon dioxide (CO₂) by vegetation, trees and soil and the storage of carbon in vegetation, trees and soil. Unlike trust assets, the value of carbon is derived from the ability and capacity to store carbon as opposed to its use or extraction, and because it is neither a "forest product" nor an "agricultural product" under the relevant statutes and regulations, carbon is not considered a trust asset.

4. Policy

A. Procedures

The BIA and the Office of the Solicitor, Central Office, will review carbon agreements for the purpose of determining whether the agreement is subject to Secretarial approval under 25 U.S.C. § 81, Contracts and Agreements with Indian Tribes (Section 81). An agreement that does not restrict a Tribe's use of a specific parcel of land but only requires them to manage the land in such a way to earn carbon credits does not require recordation as it does not encumber Indian lands within the meaning of Section 81. BIA and Office of the Solicitor review of carbon agreements will also determine whether a carbon sequestration agreement requires tribal management actions that are inconsistent with the Tribe's existing forest or agricultural resources management plan.

The extent of BIA's involvement is based on the results of the review of the proposed carbon agreement. In general, if the proposed carbon agreement encumbers Tribal trust lands for a period of seven or more years, or gives exclusive or proprietary control to a third party, the approval of the Secretary is required by Section 81. If the agreement does not encumber Tribal trust land, or if it encumbers Tribal trust lands for a period of less than seven years, the approval of the Secretary is not required. Tribal resource, forest, or range management actions under a proposed carbon agreement must be consistent with the Tribe's management plan(s), whether Secretarial approval under Section 81 is required or not. Furthermore, BIA will not review carbon agreements that include allotments since allotments are not allowed to be included in carbon sequestration agreements for Section 81 review. However, after an agreement is reviewed by BIA and the Office of the Solicitor, Tribes may add allotments to carbon agreements at their discretion, but only to the extent that the allotments are included in a Tribe's approved resource management plan(s).

The management of trust resources, such as forest or range based on the carbon agreement may necessitate a change from current management direction contained in an Integrated Resource Management Plan (IRMP), Forest Management Plan (FMP), or Range Management Plan (RMP). The Tribe will supply the BIA Line Officer with an assessment of effects, including financial effects to the management of trust resources based on carbon sequestration management activities outlined in a Tribe's proposed carbon sequestration agreement and the current IRMP, FMP, RMP or other approved management plans. If the carbon agreement conflicts with an existing approved management plan, the Tribe will be required to revise the management plan to address the Tribe's new management priority, and resubmit the revised management plan(s) to the BIA for review and approval.

Carbon agreements will not preclude the Secretary's responsibility to protect trust assets through emergency management, including the possible loss of some or all the carbon sequestered on trust land under the agreement's verification system. For example, in the fire protection of trust assets, the chosen fire suppression action may require that unburned timber be burned in a backfire to secure the fire lines intended to stop the spread of the fire. Neither the Tribe, nor outside parties can negotiate away emergency management responsibility to

protect trust assets, life or property, or management discretion with regards to emergency management.

B. Technical Support for the Tribe

BIA will provide assistance to the Tribe only in the following instances:

- 1) To obtain legal proof sufficient to satisfy a carbon agreement partner that the Tribe is the authorized party to control carbon sequestration activities (management) for specific trust land;
- 2) To change or create a management plan for trust resource management in order to comply with a carbon agreement; or
- 3) If requested, provide harvest data required for reporting purposes by the carbon agreement.

The Secretary is not responsible for direct or indirect payments or costs resulting from carbon agreements between Tribes and outside parties. Examples include the cost of inventories, periodic monitoring, and third-party verification which may be required under such agreements.

C. Authorization Letter

Under some carbon agreements, outside parties may require proof that the Tribe has the authority to manage the land in such a way as to accumulate carbon. Upon request, the BIA will provide a letter to the Tribe acknowledging the validity of the Tribe to make certain management decisions on specific trust lands.

D. Fee-to-Trust

The Office of the Solicitor, Central Office, will review carbon agreements covering fee lands when a Tribe is considering the fee to trust process and make the determination of whether the agreement is an encumbrance. If an encumbrance is attached to the title at the county of record due to a carbon sequestration agreement, any fee-to-trust transfer may be declined until the encumbrance has been satisfied or removed from the title.

5. Roles and Responsibilities


Bureau line officers **will not** approve carbon sequestration agreements.

A. Director, BIA is responsible for the development of National Policy affecting trust lands.

B. Deputy Bureau Director, Field Operations is responsible for overseeing the Regional Directors (RDs) and disseminating national policy.

- C. **Deputy Bureau Director, Trust Services** is responsible for providing the information that leads to the development of policy, and then assisting in the dissemination of policy and information to the Trust managers.
- D. **Regional Directors and Agency Superintendents** are prohibited from approving, through action or inaction, in part or in whole, any carbon sequestration agreement between a Tribe and any outside parties.

6. Approval

Darryl LaCounte  Digitally signed by Darryl LaCounte
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11/04/22

Darryl LaCounte
Director, Bureau of Indian Affairs

Date